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EA 82-0381
9 February 1982

NOTE FOR: Director, Office of Security
VIA: Chief, Legislative Liaison Division
FROM: Chief, House Liaison, Legislative Liaison Division
SUBJECT: Attached Study

Mickler

1. The author of the attached study, "The Erosion of the Federal Employee Security Program: A Critique", Mr. David Martin, [REDACTED]

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[REDACTED] The ABA plans to hold an Intelligence Conference on the same subject some time this fall.

2. You will note that Mr. Martin has included a session on "Security Clearance Procedures in the Intelligence Agencies and FBI" (p 52ff) and has expressed an interest in discussing his conclusions on this portion of the "Critique" with someone in the Agency.

3. The ABA Law and National Security Standing Committee has been tremendously supportive, via direct lobbying/testifying on the Hill in support of our legislative initiatives and via its monthly publication, the Intelligence Report, of which Mr. Martin is Associate Editor. Accordingly, if at all possible I would suggest we may want to consider making a knowledgeable PS officer available to speak with Mr. Martin.

4. I am available to discuss this request further [REDACTED]

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Attachment
As stated

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[REDACTED] (10 February 1982)

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AMERICAN BAR ASSOCIATION

STANDING COMMITTEE **Law and National Security**
INTELLIGENCE REPORT

Volume 4, Number 1

Morris I. Leblman, Chairman

January 1982

Intelligence and the Law: Key Developments in 1981

Editor's Note: As we embark on the new year, your editor thought that our readers might find it helpful if we published a summary of the major activities and developments in the field of law related to the national security. In the paragraphs that follow we have sought to summarize not only developments in the House and Senate, but also the most important court decisions bearing on intelligence during the course of the year.

Intelligence Identities Protection Act (H.R. 4 and S. 391)

— When Congress convened in January of 1981, it was generally expected that it would act rapidly on the Intelligence Identities Protection Act, very similar versions of which had been favorably reported by the relevant committees in the previous Congress. The expectation was reinforced when Representative Edward P. Boland (D.-Mass.), Chairman of the House Intelligence Committee, in a speech captioned "Intelligence Priorities for the 97th Congress," reintroduced the intelligence identities protection bill in the form in which it was reported out by both the Intelligence and Judiciary Committees during the previous session. It was again reinforced on February 25 when Jim Wright (D.-Tex.), the Majority Whip, and Bob Michel (R.-Ill.) issued a joint call for bipartisan support of the measure and for quick passage.

In the light of the very widespread support for the measure in Congress and among the general public, it is surprising that the year ended with the measure still waiting for consideration by the full Senate.

In his opening testimony on the subject on April 7 before the Subcommittee on Legislation of the House Intelligence Committee, CIA Director William J. Casey addressed the question of past and possible future damage to the American intelligence community by the deliberate identification of American intelligence officers. He pointed out that—

Our relations with foreign sources of intelligence have been impaired. Sources have evinced in-

creased concern for their own safety. Some active sources and individuals contemplating cooperation with the United States have terminated or reduced their contact with us.

... The professional effectiveness of officers so compromised [by being publicly identified] is substantially and sometimes irreparably damaged ... Replacement of officers thus compromised is difficult and in some cases impossible.

The majority of the witnesses, non-governmental and governmental, strongly urged support of the measure. Its constitutionality was, however, challenged by Messrs. Jerry J. Berman and Morton H. Halperin, testifying on behalf of the American Civil Liberties Union; by Robert Lewis, representing the Reporters Committee for Freedom of the Press, and by lawyer Floyd Abrams. In response to this challenge, the supporters of the measure pointed out that the First Amendment is not absolute and that the Supreme Court has repeatedly upheld carefully drawn limitations on speech

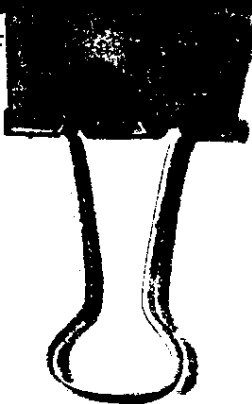
Continued on page 2

Robert Bork Nominated to U.S. Appellate Court

It was announced on December 8, 1981, that President Reagan has nominated Mr. Robert Bork, a distinguished law professor and the author of one of the most widely used books on antitrust law, to the U.S. Appellate Court in the District of Columbia. Mr. Bork served as solicitor general in the Nixon administration. After leaving government he taught at Yale Law School, until recently. He is a member of the American Bar Association's Standing Committee on Law and National Security, and has participated actively in its seminars. Because of the very wide respect he enjoys among legal scholars, there is little doubt that the confirmation will go through without difficulty.

Editor: William C. Mott. Associate Editor: David Martin. Standing Committee on Law and National Security, ABA, 1155 East 60th Street, Chicago, Ill. 60637.

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THE EROSION
OF THE
FEDERAL EMPLOYEE SECURITY PROGRAM:

A Critique

David Martin